

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA
PHILDELPHIA DIVISION**

IN RE:

JOHN E WIERNUSZ
JOANNE S WIERNUSZ
Debtors,

CASE NO. **11-11849-jkf**
CHAPTER 13
JUDGE JEAN K FITZSIMON

**RESPONSE BY OAK HARBOR CAPITAL, L.L.C. TO
OBJECTION TO PROOF OF CLAIM NUMBER 6 BY DEBTORS**

Oak Harbor Capital, L.L.C., through counsel Lawrence G Reinhold of
Weinstein & Riley, P.S. responds to the objection to the Proof of Claim as follows:

1. The Debtors have objected to Proof of Claim number 6 on the grounds that no documentation was attached and no proof of assignment was attached.
2. Oak Harbor Capital, L.L.C. filed Proof of Claim number 6 in the amount of \$ 1,054.14 for what was previously Bank of America, N.A. (FIA Card Services, N.A.) account xxxx-9506. True and correct copies of the Statements of Account for account xxxx-9506, with a closing date of March 10, 2011, are attached hereto and made a part of this response showing a balance due of \$ 1,054.14.
3. The Debtors scheduled an undisputed claim in the amount of \$ 1,140.00 for Bank of America account number xxxx-9506.
4. A proof of claim is evidence of the claim even when put into issue by an objection. *Whitney v Dresser*, 200 U.S. 532, (1906).
5. The Debtors have not raised any objection to the Proof of Claim under 11

U.S.C. § 502(b).

6. Pursuant to 11 U.S.C. § 502(b), upon objection to a claim, the Court shall determine the amount of the claim in lawful currency except for the reasons stated in paragraph (1) through (9).

7. The Debtors have not produced any evidentiary support that the amount claimed in the Proof of Claim is not actually due and owing and are estopped from denying that at least \$ 1,054.14 is due and owing.

WHEREFORE, Oak Harbor Capital, L.L.C. asks this Court to Deny the Objection to the Proof of Claim and to allow the amended claim as filed.

WEINSTEIN & RILEY, P.S.

Dated: October 5, 2011

/s/ Lawrence G. Reinhold

LAWRENCE G REINHOLD

Attorney for Oak Harbor Capital, L.L.C.

525 Rocky Hollow Drive

Akron, Ohio 44313-5945

(330) 869-2833

facsimile number: (330) 869-2844

lawrencer@w-legal.com

Pennsylvania Bar Number: 51764